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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,570	01/15/2004	Frantz Germain	0267-1911	4528
31108 7590 12/17/2007 PAUL J. SUTTON, ESQ., BARRY G. MAGIDOFF, ESQ. GREENBERG TRAURIG, LLP 200 PARK AVENUE NEW YORK, NY 10166			EXAMINER HOANG, ANN THI	
			ART UNIT 2836	PAPER NUMBER
			MAIL DATE 12/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/757,570

Applicant(s)

GERMAIN ET AL.

Examiner

Ann T. Hoang

Art Unit

2836

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-17 is/are pending in the application.
- 4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/30/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 13-14, drawn to a circuit interrupting device including among other things a trip lever displaced by a insertion and removal of a plug to open contacts in a phase conductive path, and reset contacts which are closed by insertion of the plug to close said contacts, classified in class 361, subclass 42.
  - II. Claims 15-17, drawn to a circuit interrupting device including among other things a trigger arm displaced by a blade of a plug and a sliding plate which prevents a reset button from being depressed, classified in class 200, subclass 43.16.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as a circuit interrupting device that does not include a trigger arm having a lateral V shaped ramp, a sliding plate displaced by the V shaped ramp, and a reset button having a stop member which cooperates with an opening in the sliding plate to selectively prevent the reset button from being depressed. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, and because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. During a telephone conversation with Claude Narcisse (38,979) on 11/27/07, a provisional election was made without traverse to prosecute the invention of Group I, claims 13-14. Affirmation of this election must be made by applicant in replying to this

Office action. Claims 15-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

6. Claim 14 is objected to because there is insufficient antecedent basis for "said reset assembly" in lines 1-2 of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiSalvo et al. (US 6,246,558) in view of Turner (4,825,329).

Regarding claim 13, DiSalvo et al. discloses a circuit interrupting device (10, 200) comprising:

a housing (12);

a phase conductive path disposed at least partially within said housing (12) between a line side (34) and a load side (36), said phase conductive path terminating at a first connection capable of being electrically connected to a source of electricity, a second connection capable of conducting electricity to at least one load and a third connection capable of conducting electricity to at least one user accessible load;

a circuit interrupter (90, 92, 94) disposed within said housing (12) and configured to cause electrical discontinuity between electrical contacts (52, 56) in said phase conductive path between said line side (34) and said load side (36) upon the occurrence of a predetermined condition; and

said contacts (52, 56) in said phase conductive path are maintained in a closed position and alternately in an open position by a latch (100);

a trip lever (94) disposed within said housing (12) for displacing said latch (100) such that the contacts (52, 56) in said phase conductive path are opened; and

reset contacts (104, 106) disposed at least partially within said housing (12), that, when closed, create an electrical imbalance which causes a solenoid (90) to displace the latch (100) such that said contacts (52, 56) in said phase conductive path are closed.

See Fig. 2, 6:36-67, 7:1-44, 8:2-57, 11:62-67 and 12:1-18. The reference does not disclose that the reset contacts (104, 106) are closed by the insertion of a plug or that the trip lever (94) is displaced by a prong of a plug being inserted into the housing (12) and, when the plug is removed from the housing (12), displaces the latch (100).

However, Turner discloses a circuit interrupting device in which insertion and removal of a plug mechanically initiate a reset and test trip. See abstract, Figs. 2, 4, 5B and 5C, 1:30-42, 3:27-34 and 4:50-64. It would have been obvious to one of ordinary skill in the art at the time of the invention to mechanically initiate a reset and test trip upon insertion and removal of a plug, as disclosed by Turner, in the circuit interrupting device of DiSalvo et al. in order to enable the circuit interrupting device to automatically

test the operation of the system upon connector plug insertion and removal, without the need for test and reset buttons. Mechanically initiating a reset upon insertion of a plug in the environment of DiSalvo et al. would entail closing the reset contacts (104, 106) of DiSalvo et al. by the insertion of a plug. Mechanically initiating a test trip upon insertion and removal of a plug in the environment of DiSalvo et al. would entail the trip lever (94) of DiSalvo et al. being displaced by a prong of a plug being inserted into the housing (12) and, upon the plug being removed from the housing (12), displacing the latch (100), since both the trip lever (94) and latch (100) are displaced during tripping in the circuit interrupting device of DiSalvo et al.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiSalvo et al. (US 6,246,558) in view of Turner (4,825,329), as applied to claim 13 above, and further in view of Knecht et al. (US 5,635,690).

Regarding claim 14, DiSalvo et al. in view of Turner discloses all the limitations of claim 13 as discussed above, but neither reference discloses a lockout assembly which prevents reestablishment of electrical continuity in the absence of a blade of a plug in the receptacle.

However, Knecht et al. discloses a circuit interrupting device in which a reset portion includes a lockout assembly preventing reestablishment of electrical continuity in the absence of a plug (64) inserted in a receptacle (12). See abstract, Fig. 2 and 6:19-34. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the reset lockout feature of Knecht et al. in the circuit interrupting device of DiSalvo et al. in view of Turner in order to, as a safety measure, prevent the

receptacle from being electrically live when the plug was not present within that receptacle, as disclosed by Knecht et al. in 1:10-12.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 13-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann T. Hoang, whose telephone number is 571-272-



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Art Unit: 2836

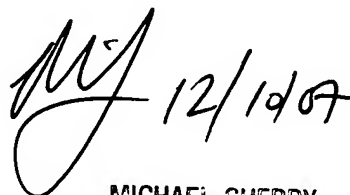
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2724. The examiner can normally be reached Monday-Thursday and every other Friday, 8 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Sherry, can be reached at 571-272-2084. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ATH  
12/8/07



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